

REMARKS

Claims 9-13, 15, and 16 are pending in the present application. No changes have been made to the claims.

On October 5, 2009, the Applicants' representatives conducted a telephone interview with Examiner Jackson and the Examiner indicated that the non-final rejection mailed September 16, 2009 was improper because none of the cited pieces of prior art teach free motion of two hinges generally perpendicular to one another, as found in independent claims 9 and 16. The Examiner stated in the interview that this rejection would be withdrawn. This Response is being filed to request such a withdrawal.

Claims 9-13, 15, and 16 stand rejected under 35 U.S.C. §103(a) as being obvious over United States Patent No. 6,203,511 to Johnson et al. (hereinafter "the Johnson patent") in view of the teaching of United States Patent Application Publication No. 2002/0133108 to Jagodzinski (hereinafter "the Jagodzinski application"). The Johnson patent is directed to an adjustable orthopedic device (104) which, as illustrated in Fig. 9, has a joint (10) that provides rotary motion along a flexion/extension plane to two connectors (36, 58). Additionally, as illustrated in Figs. 1 and 2, and as discussed in column 4, lines 47-61, a portion of joint (10) provides for angular adjustment in the plane of abduction/adduction that is substantially perpendicular to the flexion plane. This portion of the joint (10) consists of two complementary tooth surfaces (62, 62'), one attached to a member (59) and one attached to the upper clevis portion (60'), held together by a threaded fastener (64). The upper connector (58) may be angled inwardly or outwardly to properly fit the device to the upper limb of the patient by adjusting the two complementary tooth surfaces (62, 62') relative to one another and securing them in place with the threaded fastener (64). However, although the abduction angle may be adjusted, it is fixed at whatever angle is set when the threaded fastener (64) is used to connect the tooth surfaces (62, 62') of the member (59) and the upper clevis portion (60') and remains fixed until the fastener is loosened and the angle is readjusted.

On the other hand, the orthopedic device, as found in independent claims 9 and 16, comprises two hinges, each hinge having a pivot axis and pivoting freely about that axis. This is not the case in the device disclosed in the Johnson patent. At least one hinge in the

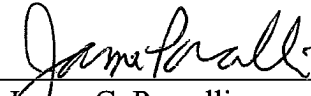
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Johnson patent is adjustable only to a fixed position. Therefore, while the Johnson patent provides for a range of adjustments for angular positioning, it does not permit both of the two hinges to pivot freely about an axis.

Additionally, the Jagodzinski application is directed to a device for stabilizing a joint and, once again, neither teaches nor suggests two hinges wherein each hinge has a pivot axis and pivots freely about that axis. For this reason, claim 9 is patentably distinct over the prior art of record and, by their dependence upon a patentably distinct independent claim 9, dependent claims 10-13, and 15 are themselves patentably distinct over the prior art of record. Claim 16, on the other hand, has limitations similar to independent claim 9 and, for the same reasons that claim 9 is patentably distinct over the prior art of record, so too is independent claim 16.

The Applicants, once again, thank the Examiner for the telephone interview of October 5, 2009, and look forward to the current rejection being withdrawn and the currently pending claims being allowed.

Respectfully submitted,
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